

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL ACTION NO.
)	2:07cr222-MHT
ANTONIO T. MCDADE)	(WO)

OPINION AND ORDER

This case is before the court on defendant Antonio T. McDade's unopposed motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for September 22, 2008, should be continued pursuant to 18 U.S.C. § 3161(h)(8).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(8)(A). In granting such a continuance, the court shall consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(8)(B)(i), or "would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation,

taking into account the exercise of due diligence."

§ 3161(h)(8)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and McDade in a speedy trial. McDade's counsel has raised concerns about his client's competency to stand trial, and both parties must conduct further investigation and evaluation that simply cannot be completed before the current trial date. This court's decision to grant a continuance is buttressed by the fact that the United States does not oppose the continuance.

Accordingly, it is ORDERED as follows:

(1) Defendant Antonio T. McDade's motion for continuance (Doc. No. 81) is granted.

(2) The jury selection and trial, now set for September 22, 2008, are reset for January 5, 2009, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson

Jr. United States Courthouse Complex, One Church
Street, Montgomery, Alabama.

DONE, this the 9th day of September, 2008.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE